



## Legislative Bulletin.....September 26, 2007

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**H.R. 2693**—Popcorn Workers Lung Disease Prevention Act

### Summary of the Bills Under Consideration Today:

**Total Number of New Government Programs:** 0

**Total Cost of Discretionary Authorizations:** \$1 million in the first year

**Effect on Revenue:** \$0

**Total Change in Mandatory Spending:** \$0

**Total New State & Local Government Mandates:** 0

**Total New Private Sector Mandates:** Several

**Number of Bills Without Committee Reports:** 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 0

### **H.R. 2693—Popcorn Workers Lung Disease Prevention Act** **(Rep. Woolsey, D-CA)**

**Order of Business:** The bill is scheduled to be considered on Wednesday, September 26<sup>th</sup>, likely subject to a structured rule. The RSC will summarize any amendments made in order under the rule in a separate RSC document.

**Summary:** H.R. 2693 would direct the U.S. Department of Labor (via the Occupational Safety and Health Administration—OSHA) to set standards for the maximum exposure to diacetyl, a food additive used to simulate butter flavor—usually on popcorn. Specifically the bill:

- Requires the Secretary of Labor to issue an interim final standard regulating worker exposure to diacetyl within 90 days of this bill's enactment and to apply such standard to the flavor manufacturers, as well as all microwave popcorn production and packaging establishments, that use diacetyl.
- Requires that the standard provide no less protection than do the guidelines issued in 2003 by the National Institute of Occupational Safety and Health (NIOSH, a division of the Centers for Disease Control), in NIOSH publication 2004-110. (See "Additional Background" section below.)
- Requires that the standard include engineering, work-practice controls, and respiratory protections to minimize exposure to diacetyl.
- Requires the standard direct employers to each develop a written exposure control plan, detailing the specific measures the employer will take to minimize employee exposure to diacetyl. Each employer plan would have to be re-evaluated at least biannually or whenever medical surveillance indicates abnormal pulmonary function in employees exposed to diacetyl.
- Requires the standard to also include requirements for: airborne exposure assessments, medical surveillance for workers, referrals for "prompt" (undefined) medical evaluation, protective equipment and clothing, and employer-provided written safety and health information and training to employees.
- Provides that the standard would become effective immediately, have the legal effect of an OSHA standard, and remain in effect until a final standard is promulgated by OSHA.
- Directs OSHA to issue a final diacetyl standard within two years of this bill's enactment. The final standard would have to contain the worker protection provisions of the interim final standard, including a short-term exposure limit, and a maximum exposure limit that does not exceed the lowest feasible level.
- Requires NIOSH to study and report to OSHA on the exposure hazards of possible flavor substitutes that are closely related to diacetyl in microwave popcorn production, and then establish recommended exposure limits for those flavoring chemicals found to be hazardous.

The bill also contains several findings, including:

- "There is compelling evidence that diacetyl presents a grave danger and significant risk of life-threatening illness to exposed employees. Workers exposed to diacetyl have developed, among other conditions, a debilitating lung disease known as bronchiolitis obliterans; and
- "An OSHA standard is urgently needed to protect workers exposed to diacetyl from bronchiolitis obliterans and other debilitating conditions."

**Additional Background:** OSHA announced this week that it is taking the following three actions that will address concerns regarding diacetyl exposure in the workplace:

1. Initiating a rulemaking under section 6(b) of the Occupational Safety and Health Act.
2. Issuing a Safety and Health Information Bulletin (SHIB).
3. Providing Hazard Communication Guidance.

These actions build upon the National Emphasis Program that OSHA announced in April 2007 to focus on the health hazards of microwave popcorn butter flavoring containing diacetyl.

The SHIB provides information on health effects for workers exposed to butter flavorings in microwave popcorn processing plants, information on controls that may be used to reduce exposures to butter flavorings, and information on applicable OSHA standards.

The Hazard Communication Guidance alerts employers, workers, manufacturers, and importers about new information related to the health hazards associated with diacetyl and food flavorings containing diacetyl and provides guidance on how to develop material safety data sheets and hazard warning labels to be in compliance with OSHA's Hazard Communication Standard.

OSHA noted in a press release that, "Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their workers. OSHA's role is to assure the safety and health of America's working men and women by setting and enforcing standards; providing training, outreach and education; establishing partnerships; and encouraging continual process improvement in workplace safety and health. For more information, visit [www.osha.gov](http://www.osha.gov)."

For more information on diacetyl and what the Labor Department is doing about it, please visit this webpage: [http://www.osha.gov/dts/chemicalsampling/data/CH\\_231710.html](http://www.osha.gov/dts/chemicalsampling/data/CH_231710.html).

To read the NIOSH recommendations from December 2003, please visit this webpage: <http://www.cdc.gov/niosh/docs/2004-110/>.

For more information on bronchiolitis obliterans, please visit this webpage: <http://www.mayoclinic.com/health/bronchiolitis-obliterans/AN00307>.

**Possible Conservative Concerns:** Some conservatives may be concerned that this legislation would circumvent the normal OSHA process of testing and evaluating potentially dangerous chemicals, a process which is currently underway. Some conservatives may also be concerned at Congress making scientific determinations of singular causation when no such definitive evidence exists. (Even the NIOSH report cited above admits such inconclusiveness of evidence.)

**RSC Bonus Facts:** In March 2004, former microwave popcorn plant employee Eric Peoples, of Joplin, Missouri, was awarded \$20 million for permanent lung-injuries sustained while on the job. (<http://www.cbsnews.com/stories/2004/03/16/health/main606532.shtml>) On July 19, 2005, jurors awarded \$2.7 million to another popcorn plant worker in Missouri for his claim of diacetyl-induced respiratory problems. (<http://sec.edgar-online.com/2005/08/05/0000051253-05-000020/Section10.asp>)

On July 26, 2006, the International Brotherhood of Teamsters and the United Food and Commercial Workers petitioned OSHA to promulgate an emergency temporary standard to protect workers from the deleterious health effects of inhaling diacetyl vapors. (<http://defendingscience.org/upload/Union%20Petition%20to%20CHAO%20on%20Diacetyl%20Signed.pdf>)

**Committee Action:** On June 16, 2007, the bill was referred to the Education and Labor Committee, which, one week later, marked up the bill and ordered it reported to the full House by voice vote.

**Administration Position:** The Department of Labor sent a letter to Education and Labor Chairman George Miller, expressing strong opposition to the legislation, for much the same reasons cited above in “Possible Conservative Concerns.” As noted above in the “Additional Background” section, the Administration has already taken numerous steps to investigate safety concerns with diacetyl and to eventually set workplace exposure standards.

**Cost to Taxpayers:** CBO writes that, “implementing H.R. 2693 would cost approximately \$1 million in 2008, assuming appropriation of the necessary amounts. CBO assumes these funds would be used primarily to fund the NIOSH study required by the bill. Costs in 2009 would not be significant. Enacting the bill would not affect revenues or direct spending.”

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** CBO confirms that the required interim standard and the final standard would constitute private-sector mandates on those who manufacturer or handle diacetyl in a commercial context.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** The Education and Labor Committee, in [House Report 110-239](#), asserts that, “H.R. 2693 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.”

**Constitutional Authority:** The Education and Labor Committee, in [House Report 110-239](#), cites constitutional authority in Article I, Section 8, Clause 3 (the congressional power to regulate interstate commerce).

**Outside Organizations:** The following organizations have expressed a public position on H.R. 2693:

**Opposing the bill:**

- Associated Builders and Contractors
- Mason Contractors Association of America
- National Association of Convenience Stores
- National Association of Home Builders

- National Association of Manufacturers
- National Federation of Independent Business
- Printing Industries of America
- U.S. Chamber of Commerce

Supporting the bill:

- American College of Environmental and Occupational Medicine
- American Industrial Hygiene Association
- American Society of Safety Engineers
- AFL-CIO
- Flavor and Extract Manufacturers Association
- International Brotherhood of Teamsters
- United Food and Commercial Workers

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